HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1280 OF 2006

Between:

B.S.C. Mohan ...Appellant

And

The Depot Manager,
A.P. State Road Transport Corporation,
Musheerabad Depot, Hyderabad and another.
...Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri M. Abid Ali
for Sri V. Rajagopala Reddy

Counsel for respondent No.1 : Sri V.T.M. Prasad

19th July, 2007

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Per G.S.SINGHVI, C.J.

This appeal is directed against order dated 3-10-2005 vide which the learned Single Judge dismissed the writ petition filed by the appellant for quashing award dated 23-8-1993 passed by Presiding Officer, Labour Court-I, Hyderabad in I.D.No.32 of 1993 (old I.D.No.172 of 1987).

A perusal of the record shows that while he was working as Conductor in Musheerabad Depot of the Andhra Pradesh State Road Transport Corporation, a departmental enquiry was instituted against the appellant on the following charges:

> "Charge 1:- For having failed to observe enroute TIC point and complete ticket issues within two fare stages while proceedings towards E.N. Nagar.
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> Charge 2:- For having failed to collect fare and issue tickets to 2 passengers found travelling without tickets from Koti to Patny ex-stages 5 to 14/15.
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> Charge 3:- For having failed to collect fare and issue ticket to 1 passenger found travelling without ticket from YMCA to Patny ex-stages 7 to 14/15.
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> Charge 4:- For having failed to collect fare and issue tickets to 2 passengers found travelling without tickets from P.Tools to Church ex-stages 11 to 16.
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> Charge 5:- For having failed to issue tickets to 4 passengers found travelling without tickets from Boats Club to C.Tower ex-stages 11 to 15, after collecting Rs.2/- as fare.
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> Charge 6:- For having refused to acknowledge the passenger's statement and misbehaved with the checking official by threatening them that you would finish them at 00.00 hrs. at their residence if your services are affected.
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> Charge 7:- For having detained the bus from 9.20 hrs. to 10.55 hrs. at E.N. Nagar unnecessarily causing loss to the revenue of the Corporation."

The enquiry officer submitted report with the finding that the charges have been proved against the delinquent. The disciplinary authority accepted the enquiry report and passed order dated 8.8.1986 whereby penalty of removal from service was imposed on the

appellant. The appeal preferred against that order was dismissed by the appellate authority.

The dispute raised by the appellant was referred by the State Government to Labour Court-I, Andhra Pradesh, Hyderabad. On a consideration of the pleadings of the parties and the record of enquiry, the learned Presiding Officer of the Labour Court concluded that the enquiry held against the delinquent i.e. the appellant is fair and proper, that the findings recorded by the enquiry officer are based on correct appreciation of evidence and that there is no valid ground to interfere with the discretion exercised by the employer to remove the workman. For the sake of convenient reference, the relevant extracts of award dated 23.8.1993 passed by the learned Presiding Officer, Labour Court are reproduced below:

> "Ex.M5 is the S.R. maintained by the petitioner on 25-12-1985. Ex.M-2 is the statement of the 5 passengers from whom the petitioner collected the fare, but failed to issue tickets, all of whom have stated that they paid the fare to the petitioner but the petitioner failed to issue them tickets. Ex.M-3 is a clarification given by the petitioner to the questions put by the checking officials wherein he stated that on 24-10-1985 a charge memo was written in the P.W's office in the presence of depot manager and that he decided all the charges, as they are all incorrect. Ex.M-4 is the charge memo wherein it was mentioned in the first charge that the petitioner failed to observe the TIC points and failed to complete issue of tickets within two fare stages. And in the charge No.2 it was stated that two passengers found travelling without tickets from stages 5 to 14/15 from whom the petitioner was made to collect the TPT's. The Charge No.3 showed one passenger found travelling without ticket from stages 7 to 14/15 from whom the petitioner collected 0-75 paise and failed to issue tickets. Charge No.4 showed that two passengers found travelling without ticket from stages 11 to 16 from whom the TPT's were collected. Charge No.5 show that a batch of 4 passengers were found without tickets from stages 11 to 15 from whom the petitioner collected the fare of two rupees and failed to issue them tickets. Ex.M.5 is the check sheet in which the petitioner has mentioned his spot explanation wherein he stated that the check took place at stage Bata and in that 9 passengers were found ticket less and that 4 passengers have not paid him fare and when those passengers were questioned by the T.T.I's due to fear they said that they paid to him and that no error was committed by him. Ex.M.6 special report. Ex.M.7 is the TTI. Ex.M8 is the explanation given by the petitioner to the charge memo dated 23-12-

1985 therein he complained that he was not furnished copy form of M.D-45/R he asked for furnishing the said MTD. Ex.M.9 is the suspension order while Ex.M.10 is the charge sheet. Ex.M.11 is the explanation given by the petitioner to the second charge sheet wherein he stated that the charge sheet is completely illegal and void. Ex.M.12 and Ex.M.13 are statements of the checking TTIs recorded by the enquiry officer on 30-4-1984. Ex.A.14 is the findings of the enquiry officer. Ex.M.16 is the show cause notice. Ex.M.17 and Ex.M.18 is the proceedings of the higher authorities rejecting the appeal of the petitioner.

The passengers have stated as per Ex.M.2 that the fare was collected from them and the petitioner has failed to give them tickets. It is not mentioned by the petitioner even in his claim statement as to how the passenger's statement recorded by the checking officials is incorrect. The petitioner only questioned the correctness of the charges and legality of the charges without mentioning any reasons. It is a case where the petitioner is aware of the irregularity alleged by the respondent's checking officials. At least, in the claim statement, the petitioner expected to mention how he has not committed any irregularity and how it happened that 9 passengers were travelling without tickets in his bus at the time of check and at what stages those passengers have boarded the bus. The conduct of the petitioner does not inspire confidence that a false case has been foisted. It is clearly stated by the respondent that the second charge sheet was issued to the petitioner mentioning more and correct details and that it is a revised charge sheet. Issue of revised charge sheet is an indication that first charge sheet has been cancelled and that even if any enquiry is held pursuant to the first charge sheet and cancelled and the respondent conducted the second enquiry. I find that the respondent has not committed any illegality in conducting the second enquiry. Evidence of the checking officials recorded by the enquiry officer as per Ex.M.12 and M.13 showed that the petitioner has failed to issue tickets to 5 passengers having collected fare from them besides failing to collect fare and issued tickets also to 4 more passengers. I find there is no reason to disbelieve the statement of checking officials and passenger's statement, since the petitioner found indulging in a gross negligence causing loss to the Corporation and its legitimate income and also indulging in misappropriating the income of the respondent. Therefore, the order of removal passed by the respondent is valid. Hence, for all these reasons under point wise I hold that the order of removal of petitioner from service is valid."

After almost 12 years of the publication of award, the appellant instituted Writ Petition No.18776 of 2005, which was summarily

dismissed by the learned Single Judge on the ground of laches.

We have heard learned counsel for the parties and are convinced that the learned Single Judge did not commit any error by declining to entertain the appellant's prayer for reinstatement. Article 226 does not, in terms, prescribe any limitation for filing a petition for issue of direction, order or writ including the writs of certiorari, but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time. In other words, a person, who is guilty of laches, is not entitled to seek relief under Article 226 of the Constitution of India - **State of Madhya Pradesh v. Bhailal Bhai**[1], **Tilokchand v. H.B. Munshi**[2], **Mafatlal Industries Ltd. v. Union of India**[3] and **R.S. Deodhar v. State of Maharastra**[4].

Even on merits, we are convinced that the appellant has failed to make out a case for interference under Article 226 of the Constitution of India.

In Writ Petition No.9840 of 1997 – C. Rami Reddy v. The Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District and another, decided on 4-4-2007, one of us (the Chief Justice) considered the question whether the Labour Court/Industrial Tribunal or for that reason this Court can interfere with the discretion exercised by the employer to remove the conductor from service on the charge of financial misdemeanor and observed:

> "While adjudicating such matters, the Court has to keep in mind that a Conductor serving the Corporation plays an important role in collection of the revenue, which, ultimately, constitutes the part of fund on which the Corporation carries its business, industry and undertaking. If an employee belonging to that cadre is found guilty of financial misdemeanor, then he has to be dealt with appropriate seriousness and adequately punished. Generally speaking, the employees of the Corporation, as other employees of the government and its agencies/instrumentalities, are trustees of public faith and confidence and are expected to serve the organization with complete devotion, honesty and commitment. If an employee is found guilty of misappropriation of public funds,

corruption, dishonesty, fraud, etc., then he has no right to remain in service. The employer is duty bound to show him the door as early as possible. In this connection, reference can usefully be made to the judgments of this Court in **Andhra Pradesh State Road Transport Corporation v. Additional Judge, Labour Court-cum-Industrial Tribunal**[5] and of Gujarat High Court in **Gujarat State Road Transport Corporation v. Jamnadas Behari Bhai**[6]."

Section 11-A of the Act, which has been interpreted in several judicial pronouncements, reads as under:

> **"11-A. Power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of Workmen:-** Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:
>
> Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

By enacting the above reproduced provision, the Parliament has conferred statutory power on the Labour Courts/Tribunals/National Tribunals to give appropriate relief in the cases of discharge or dismissal of workmen. By exercising power under Section 11-A the Labour Courts/Tribunals/National Tribunals are entitled to set aside an order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions as it thinks fit. However, power under Section 11-A can be exercised only on fulfillment of the conditions enumerated in that Section, namely, that the Labour Court/Tribunal or the National Tribunal must be satisfied that the order of discharge or dismissal was not justified. However, conferment of

wide power on the Labour Court/Tribunal or National Tribunal to set aside the order of discharge or dismissal does not mean that in each and every case the Labour Court/Tribunal or National Tribunal has got untrammeled power to interfere with the punishment imposed by the employer. The power has to be exercised only after the Labour Court, Tribunal or National Tribunal is satisfied that the order of discharge or dismissal. The satisfaction of the Labour Court, Tribunal or National tribunal is not a subjective satisfaction but clearly an objective satisfaction. This obviously involves application of mind by the Labour Court, Tribunal or National Tribunal on various relevant circumstances, like the nature of delinquency committed by the workman, his past conduct, the impact of the delinquency on the employer's business/industry as also the total length of service rendered by the workman. That apart, the Labour Court, Tribunal or National Tribunal is required to consider as to whether the decision taken by the Management is just or not. Only after due consideration of these factors, the Labour Court, Tribunal or National Tribunal can upset the punishment imposed by the employer. Interference cannot be done by the Labour Court, Tribunal or National Tribunal with the quantum of punishment without recording a specific finding in the manner aforesaid and after consideration of the material circumstances.

In **Workmen of M/s. Firestone Tyre & Rubber Co., of India v. The Management**[7], the Supreme Court considered the background in which Section 11-A was inserted in the Act and laid down the following propositions:

> "Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can

now differ from that finding in a proper case and hold that no misconduct is proved.

We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A.

Another change that has been effected by Section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under S.11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman

only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S.11A.

The Legislature in S.11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal, for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal."

In **Engineering Laghu Udyog Employees Union v. Judge, Labour Court and Industrial Tribunal**[8], a three Judges Bench of the Supreme Court referred to various judicial precedents including the often-quoted judgment in **M/s. Firestone Tyre & Rubber Co., of India v. The Management** (supra) and held:

"Section 11-A of the Industrial Disputes Act, 1947 (for short "the Act") confers a wide power upon the Labour Court, Tribunal or the National Tribunal to give appropriate relief in case of discharge or dismissal of workman. While adjudicating on a reference made to it, the Labour Court, Tribunal or the National Tribunal, as the case may be, if satisfied that the order of discharge or dismissal was not justified, may, while setting aside the same, direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Thus, only in a case where the satisfaction is reached by the Labour Court or the Tribunal, as the case may be, that an order of dismissal was not justified, the

same can be set aside."

In **Mahindra and Mahindra v. N.D., Narawade**[9], the Supreme Court held as under:

> "After introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the work concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of the Supreme Court and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot be way of sympathy alone exercise the power under Section 11-A and reduce the punishment."

In **M.P. Electricity Board v. Jagdish Chandra Sharma**[10], the Supreme Court interpreted Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960, which is pari materia to Section 11-A of the Act, and held:

> "The scope of Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 is the same as that of Section 11-A of the Industrial Disputes Act, 1947. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. The Tribunal or the Labour Court cannot interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. The jurisdiction vested with the Labour Court to interfere with punishment is not to be exercised capriciously and arbitrarily. It is necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it can interfere to reduce the punishment. When charges proved are grave vis-à-vis the

establishment, interference with punishment of dismissal cannot be justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 f the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charge proved."

In **Hombe Gowda Educational Trust v. State of Karnataka**[11], the Supreme Court interpreted Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 and held:

> "The Tribunal's jurisdiction under Section 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 is akin to one under Section 11-A of the Industrial Disputes Act, 1947. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. Such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment."

In **South Indian Cashew Factories Workers' Union v. Kerala State Cashew Development Corporation**[12], the Supreme Court reiterated that in exercise of power under Section 11-A, the Tribunal cannot sit in appeal over the findings recorded in the disciplinary proceedings and held:

> "If the enquiry is fair and proper then in the absence of any allegations of victimisation or unfair labour practice the Labour Court has no power to interfere with the punishment imposed. Section 11-A of the Industrial Disputes Act, 1947 gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. But, that section is applicable only in the case of dismissal or discharge of a workman. Since section 11-A was not applicable, the Labour Court had no power to reappraise the evidence to find out whether the findings of the enquiry officer were correct or not whether the punishment imposed was adequate or

not."

In view of the above stated legal position, we see no reason to upset the well reasoned award passed by the Labour Court.

In the result, the appeal is dismissed.

G.S.SINGHVI, C.J.

19th July, 2007

C.V.NAGARJUNA REDDY, J.

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[1] AIR 1964 SC 1006
[2] AIR 1970 SC 898
[3] JT 1996 (11) SC 283
[4] AIR 1974 SC 259
[5] 1986-63-FJR 230
[6] 1987-I-LLN-152
[7] AIR 1973 SC 1227
[8] (2003) 12 SC 1
[9] (2003) 5 SCC 134
[10] (2003) 5 SCC 401
[11] (2006) 1 SCC 430
[12] (2006) 5 SCC 201